

**From:** Steve Loughran  
**To:** Microsoft ATR  
**Date:** 1/24/02 5:25pm  
**Subject:** Microsoft Settlement

Please find attached my comments on the attached settlements. Overall, I think it will be at stopping anti-competitive behavior at Microsoft as the 1945 Yalta Conference was at bringing democracy to Eastern Europe, but I also have some specific issues worth bringing up.

-Steve

# Comments on the Proposed Final Judgment with Microsoft

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As a software engineer with many years experience writing Windows programs, I read the findings of the anti-trust investigation into Microsoft with some interest. It was fascinating and saddening to see how products I had worked with : Borland OWL, QuickTime, Intel's NSP effort, Netscape were all destroyed by Microsoft in order to protect what is clearly a monopoly in both desktop operating systems and application.

Given that Microsoft were found to have been maintaining an illegal operating systems monopoly, I would have expected a radical attempt to correct this problem, on a par with the EU-IBM settlement of the mid-eighties.

I was therefore highly disappointed when the final judgement appeared, as it :

- ? does nothing to remedy the damage already done

- ? does nothing to prevent a recurrence

I believe the fact that MS are amenable to this settlement shows that they recognize both these facts, and that by rushing to reach such an unsatisfactory agreement, the DoJ will only be wasting another opportunity to increase competition and innovation in the software industry.

Most pertinently, the settlement does not make it easy for alternative operating system vendors to integrate with Microsoft applications, products and protocols, as the scope of what can be disclosed, and the security and business case get-out clauses open to Microsoft, will prevent enough information to do so from ever becoming available.

I would suggest that this settlement is discarded and a serious attempt is made to come up with a solution which actually addresses the fundamental problem, rather than nibbles at the edges.

That said, I would also like to take issue with many of the points in the settlement on a case by case basis.

## **III.D and III.E : Disclosure of Information**

On the subject of Microsoft Middleware, I would like to state some examples of where the APIs are not documented in an open manner. They may be available under non-disclosure agreements, but that does not benefit me.

1. How to write a new subsystem under Windows NT; a peer of the Win32 and OS/2 subsystems.

This would enable applications written for a different API, such as Unix, to run unmodified on Windows - one could even implement a native Java runtime

instead of going through Windows. Microsoft have never documented how to write a new subsystem.

2. How to create new Windows XP themes.  
Windows XP has a reskinable user interface, like the Macintosh does, but MS have not documented how to create new themes, so that developers such as myself cannot make or sell them, Microsoft do sell themes as added value extras, clearly demonstrating how withholding of information continues to provide direct financial benefit. There are rumors that only digitally signed themes can be loaded by the OS, in which case Microsoft will have to remove that feature from the platform or provide a free signing service, otherwise the theme creation information would still not permit competition in the theme product category.
3. What the MSSCI source control interface to Visual Studio is. This is the interface which source code management providers need to implement to integrate their products with Microsoft's development tools; it is available under NDA only, so cannot be supported by open source products. This effectively forces Windows developers to use Microsoft approved source code management tools, which ties them to a windows platform.
4. How to integrate applications with Internet Explorer to the level that the MS Office suite does: when this is installed it adds buttons to the toolbar which indicate that somehow IE is looking at the creating application of every page and determining if it was written by an application in the office family. Third party applications need to be afforded equal rights.
5. COM+ . The entire network protocol.
6. The Microsoft Office file format.

I suspect that the 'security' clause (J.1) will be used to restrict access to items (1), (2), (5), and would therefore wish for the blanket option to deny requests to be severely curtailed. The TC committee should have the right to see the documentation of the API and determine if that really is the case, and the right to force OS changes to nullify the security concerns in the interests of interoperability.

I fear that item (3) will be denied on the basis that it is an in-application API, not a middleware product which talks directly to the OS. The same would hold for any API used inside the office products. However the dominant market share of MS in these segments, and their track record in anti-competitive behavior, should require this kind of "extension API" to be documented.

This leads me to the conclusion that any "extension API" For any Microsoft application, which is made available for aftermarket or add-on products must be made available for developer scrutiny and use, as much as for OS APIs. Effectively the definition of a Microsoft Middleware product (ref. VIJ and VI.K) should include the Microsoft Office and Microsoft Visual Studio platforms.

File formats, such as MS office, are not disclosed in an open manner. Although MSDN does document parts of the format, it explicitly denies readers the rights to use that information to write competing applications or use it on a platform other than Windows. Both of these restrictions restrict competition.

The second of the disclosure clauses (J.2) permits Microsoft to deny information to any person they believe does not have a reasonable business need or fails to meet reasonable, objective standards concerning the authenticity or viability of the business. This will deny access to information to home and open source developers -despite the history of innovation which such people have brought to software. I propose that such decisions as to suitability of the recipient should be left to the technical committee, and that all information should be released without fees or under non-disclosure requirements.

I would also propose that some right of appeal should be available if, for any reason, and information request is denied.

### ***B. Appointment of a Technical Committee***

I am concerned that the TC membership requirements: "you may not work for a competitor to Microsoft for two years" will unduly hamper who is willing to join the committee. Microsoft view everyone in the computing industry as a competitor for the money of consumers; so that clause denies so many career opportunities that you must be a retired developer to consider the post. Microsoft's own employees are not subject to such rehire restrictions, so why should the technical committee members.

I would therefore propose that the TC membership restrictions exactly match those which Microsoft apply to their own employees.

### ***Definitions***

I am particularly concerned that the definitions are so tightly defined that they can be avoided with ease. For example, the Microsoft .NET runtime is not defined as middleware, even though the Microsoft Java VM is. This makes it possible for Microsoft to provide undocumented APIs between .NET and the OS, and between the .NET runtime and Microsoft applications.

Middleware should be defined as "any framework above the basic OS which can be used to write applications or components of applications"; that is the general definition as used in the computer industry.